notice was valid or not. The prescribed notice under section 122(4) is the notice which is endorsed on the petition itself and reads as follows:

"This petition having been presented to the court on the day of 19 , it is ordered that this petition shall be heard at noon.

If you, the said J.S. or G.H., intend to dispute the matter of any of the statements contained in the petition, you must file with the Registrar of this court a notice showing the grounds upon which you intend to dispute the same."

What I have to consider therefore is whether the service of the petition on the administratrices was good or not. Rule 233(1) of the Bankruptcy Rules which applies in this case reads:

"The petition shall unless the court otherwise directs be served on each executor who has proved the will or as the case may be on each person who has taken out letters of administration. The court may also if the court thinks fit order the petition to be served on any other person."

It is clear from this rule that the person to be served should not only be the person who had been appointed administrator but who had also taken out letters of administration.

I hold therefore that the service of the petition is bad and recall the order made on the 26th of April 1965.

Order recalled.

Solicitors: *Gibl & Co.*

THANGAVELU & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Aziz J.) June 28, 1965]

[K.L. — Criminal Appeal No. 74 of 1964]

Bribery and corruption — Conviction on accomplice evidence — Cautioned statement by accused — Whether such statement can be used to implicate co-accused — Prevention of Corruption Act, 1961, s. 4(a).

This was an appeal against the conviction of the appellants for charges under section 4(a) of the Prevention of Curruption Act. The main grounds of appeal were that: (1) the learned president of the sessions court failed to consider whether some of the witnesses were accomplices and if so whether the necessary caution had been taken in accepting such evidence; (2) the learned president erred in law in considering the statement of the second appellant as evidence against the first appellant.

Held: (1) there was nothing in the judgment of the learned president to indicate that he had applied his mind to determine whether or not any of the witnesses were accomplices and if so whether there was any desirability for corroboration of their evidence and therefore the conviction of the first appellant must be quashed;

(2) as the second appellant had made a cautioned statement confessing to the offence there was a presumption of law against him and as he had failed to rebut the presumption, his appeal against conviction must be dismissed.

CRIMINAL APPEAL.

Dato' David Marshall and *R. Ponnudurai* for the first appellant.

Chooi Mun Sou for the second appellant.

B. T. H. Lee (Senior Federal Counsel) for the respondent.

Abdul Aziz J.: The second appellant was charged under section 4(a) of the Prevention of Corruption Act 1961 and the first appellant was charged with the abetment of the offence committed by the second appellant contrary to section 11 and section 4(a) of the same Act. Upon these charges they were convicted and sentenced to two months imprisonment and a fine of $50. Against this conviction and sentence the appellants now appeal.

The prosecution case was rather involved. To summarise, the facts are as follows:—

On 14th October, 1963 the complainant, Tan Piow Boh, being desirous of obtaining a stall licence at Jinjang New Village, approached an unlicensed hawker friend named Wong Yoke Lin for assistance. The latter took him to see appellant No. 2, who in turn brought appellant No. 1 into the picture. Why the complainant should apply to the Kuala Lumpur Municipality for a street licence for Jinjang New Village which is outside the municipal limit of Kuala Lumpur is beyond my comprehension. Understandably, no licence was obtained by the complainant. Several meetings took place between the parties concerned, including appellants No. 1 and No. 2, and as a result of these meetings it was suggested by appellant No. 1 that he could instead get him a stall licence for a site in High Street, Kuala Lumpur. Several meetings again took place between the appellants and the complainant which tends to suggest some conspiracy between them, and on the day in question, that is, 21st November, 1963, the first appellant handed to the complainant a plan for a stall site at High Street and asked the complainant for $50 tea money. When the complainant said he had no money then the first appellant asked the complainant to come back with the money in the afternoon. The complainant promptly went to the police station and lodged a report, where he was given $50 in marked notes to be handed over to the person concerned. At the appointed time he went back to the municipal offices and met the first appellant who asked him if he had got the money and when told that he had, he was asked to hand the money to the second appellant when he asked for it. A short while later the second appellant appeared. The complainant was taken to the lavatory and when told that the first appellant had asked him to collect the money the complainant handed the marked notes to the second appellant. At a pre-arranged signal the police closed in and both appellants

were taken to the office of the health officer where they were searched. On the person of the second appellant the $50 marked notes were found but none was found in the possession of the first appellant.

Several grounds of appeal were urged on behalf of the first appellant, the material ones being that the learned president failed to consider whether prosecution witnesses Nos. 5, 7 and 8 and appellant No. 2 were accomplices and if they were, the learned president had failed to take into account the necessary caution in accepting such evidence; and that the learned president erred in law in considering the statement of the second appellant as evidence against the first appellant.

The judgment of the learned president, in addition to being brief generally, is bare on this point. There is nothing in the judgment to indicate that the learned president had applied his mind to determine whether or not any of the witnesses were accomplices within the meaning of the word and, if so, whether there was any desirability for corroboration of their evidence. It is also unfortunate that the learned president has apparently taken into consideration the statement of the second appellant as evidence against the first when he said:—

"It is manifest from.....the voluntary statements that both accused were involved in this transaction."

The cautioned statement of the first appellant amounted to a complete denial of the charge but the statement of the second appellant which amounted to a confession also implicated the first appellant.

It is well-settled that a confession is only evidence against the maker thereof and as a rule of prudence the confession of an accused insofar as it implicates the co-accused has little weight.

As regards the appeal of the second appellant, apart from the evidence of the witnesses, the main evidence was the cautioned statement made by the second appellant immediately after the arrest. In this statement he admitted that the $50 marked notes were found on him after he has seen a Chinese in the office lavatory. In regard to this appellant, the failure of the learned president to apply his mind as above and to apply the necessary caution is immaterial. There is a presumption of law under such circumstances and that presumption has not been rebutted.

In the circumstances , the appeal of the first appellant is allowed and the conviction and sentence is hereby quashed and, subject to any direction of the Public Prosecutor to the contrary, a retrial is hereby ordered. The appeal of the second appellant is dismissed.

Appeal of 1st appellant allowed.
Appeal of 2nd appellant dismissed.

Solicitors: *Rajendra & Teik Ee; Chooi Mun Sou.*

UNITED INVESTMENT & FINANCE LTD. v. UNIVERSAL SERVICE AGENCY

[O.C.J. (Choor Singh J.) June 28, 1965]

[Singapore — Suit No. 921 of 1963]

Practice and Procedure — Execution on judgment — Payment of full amount of judgment and costs into court —Whether precludes execution on judgment — R.C.S. 1934, O. LVIII r. 1(3)(f).

The plaintiffs obtained judgment against the defendants for the sum of $1,832.13 and costs. The defendants instead of paying the money to the plaintiffs paid the amounts due into court as they intended to appeal against the judgment. The plaintiffs proceeded to levy execution and the defendants' property was seized under a writ of seizure and sale. The defendants thereupon applied by summons in chambers for the writ of seizure and sale to be set aside and the property seized to be released on the ground that the writ was void because it was issued after the plaintiffs had received notice of the payment into court by the defendants of the full amount of the judgment and costs.

Held: Order LVIII rule 1(3)(f) does not authorise a judgment debtor to pay into court the amount due on the judgment. Such payment can only be made in pursuance to an order of court. As there was no such order authorising payment into court or staying execution on the judgment, the plaintiffs were well within their rights in levying execution on the defendants' property to enforce payment of the judgment.

Case referred to:—

(1) *Clissold* v. *Cratchley* [1910] 2 K.B. 244.

CIVIL SUIT.

John Chor-Yong Tan for the plaintiffs.

J. L. R. Pillai for the defendants.

Choor Singh J.: In this action judgment was given on the 26th March 1965 in favour of the plaintiffs against the defendants in the sum of $1,832.13 and costs, which were taxed at $1,911.95. The plaintiffs proceeded to levy execution on the judgment and the defendants' property was seized under a writ of seizure and sale. The defendants applied by summons in chambers for the writ of seizure and sale to be set aside and the property seized to be released on the ground that the writ of seizure and sale was void because it was issued after the plaintiffs had received notice of the payment into court by the defendants of the full amount of the judgment and the taxed bill of costs.

After hearing counsel for both parties, I dismissed the defendants' application with costs. The defendants applied for leave to argue the matter further in open court. This application